

Definition of Disability Under the ADA and ADAAA (ADA 法及び ADAAA 法に基づく障害の定義)

Disability means, with respect to an individual—

Prong 1 – “Actual Disability”: a physical or mental impairment that substantially limits one or more major life activities of such individual;

Prong 2 – “Record of”: a record of such an impairment; or

Prong 3 – “Regarded as: being regarded as having such an impairment, which means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”

Prong 1: Actual Disability (事実上の障害)

“Physical or mental impairment” 身体及び精神の機能的障害 9

An impairment is a physical or mental disorder, illness, or condition. It does not include ordinary personality traits, such as irritability, poor judgment, or chronic lateness, that are unrelated to a physical or mental impairment.

“Physical or mental impairment” is any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine. They also cover any mental or psychological disorder, such as intellectual disability (formerly termed mental retardation), organic brain syndrome, emotional or mental illness, and specific learning disabilities..

“Major life activities” (主な身体的活動—生理的・医学的な面においてです)

A non-exhaustive list of examples of major life activities: caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working.

Major life activities include the operation of *major bodily functions*, including functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. Major bodily functions include the operation of an

individual organ within a body system (e.g., the operation of the kidney, liver, or pancreas).

As a result of the ADAAA's recognition of major bodily functions as major life activities, it will be easier to find that individuals with certain types of impairments have a disability.

Substantial limitation 実際にかかる身体的制限

An individual must be substantially limited in performing a major life activity as compared to most people in the general population. However, Congress lowered the threshold for establishing a substantial limitation from the standards established by courts and in the original ADA regulations. An impairment no longer has to prevent or severely or significantly restrict a major life activity to be considered "substantially limiting."

Congress directed that the term "substantially limits" be construed broadly in favor of expansive coverage, although not all impairments will constitute a disability. Furthermore, under the ADAAA, the question of whether an impairment is a disability should not demand an extensive analysis.

Particular Length of time 機能障害状態の期間

Even a short-term impairment may be a disability if it is substantially limiting.

Relevant fact in determining whether an impairment substantially limits a major life activity

日常生活に大きな支障をきたすかどうか、決定するための
関連要素

The *condition, manner, or duration* (where duration refers to the length of time it takes to perform a major life activity or the amount of time the activity can be performed) under which a major life activity can be performed may be considered if relevant in certain cases in determining whether the impairment is a disability. But, with respect to many impairments, including those that should easily be concluded to be disabilities, it may be unnecessary to use these concepts to determine whether the impairment substantially limits a major life activity.

Assessment of the *condition, manner, or duration* may include consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.

Episodic or in Remission (一時的な障害、障害の軽快)

An impairment that is “episodic or in remission” (i.e., the impairment’s limitations are not present all the time) meets the definition of disability if it would substantially limit a major life activity when active. This means that even if the effects of an impairment occur briefly or infrequently, the impairment could still be a disability.

Examples of impairments that may be episodic include epilepsy, hypertension, asthma, diabetes, major depressive disorder, bipolar disorder, and schizophrenia. An impairment such as cancer that is in remission but that may possibly return in a substantially limiting form will also be a disability under the ADAAA and the regulations.

Mitigating Measures (障害による制限限度の緩和)

Except for ordinary eyeglasses or contact lenses, the ADAAA requires that the positive effects from an individual’s use of one or more “mitigating measures” be ignored in determining if an impairment substantially limits a major life activity. Instead, the determination of disability must focus on whether the individual *would be* substantially limited in performing a major life activity *without* the mitigating measure. This may mean focusing on the extent of limitations prior to use of a mitigating measure or on what would happen if the individual ceased using it.

A non-exhaustive list of examples of mitigating measures includes medication, medical equipment and devices, prosthetic limbs, low vision devices (e.g., devices that magnify a visual image), hearing aids, mobility devices, oxygen therapy equipment, use of assistive technology, reasonable accommodations, learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, and physical therapy.

Ordinary eyeglasses (一般のメガネ)

“Ordinary eyeglasses or contact lenses” – defined in the ADAAA as lenses that are “intended to fully correct visual acuity or to eliminate refractive error” – must be considered when determining whether someone has a disability. For example, a person who wears ordinary eyeglasses to correct a routine vision impairment is

not, for that reason, a person with a disability under the ADA. However, the ADAAA does allow even individuals with fully corrected vision to challenge uncorrected vision standards that exclude them from jobs. An employer must be able to show that the challenged standard is job-related and consistent with business necessity.

Mitigating measures and “reasonable accommodation” or “direct threat”

(制限緩和と「合理的配慮」もしくは「直接的脅威」)

The ADAAA’s prohibition on assessing the positive effects of mitigating measures applies only to the determination of whether an individual meets the definition of “disability.” Other determinations – including the need for a reasonable accommodation and whether an individual poses a direct threat (a significant risk of substantial harm to self or others) – can take into account both the positive and negative effects of a mitigating measure. The negative effects of mitigating measures may include side effects or burdens that using a mitigating measure might impose. For example, someone with diabetes may need breaks to take insulin and monitor blood sugar levels, and someone with kidney disease may need a modified work schedule to receive dialysis treatments. On the other hand, if an individual with a disability uses a mitigating measure that results in no negative effects and eliminates the need for a reasonable accommodation, an employer will have no obligation to provide one. For example, an employee with epilepsy may no longer need permission for unscheduled breaks as a reasonable accommodation after switching to a different medication that completely controls seizures.

Requiring Mitigating Measures 制限緩和の必要性

An employer cannot require an individual to use a mitigating measure. However, failure to use a mitigating measure may affect whether an individual is qualified for a particular job or poses a direct threat.

Impairments that almost always substantially limit a major life activity 日常生活において大きな支障をきたす機能障害

Certain specific types of impairments should easily be concluded to be disabilities and examples of major life activities (including major bodily functions) that the impairments substantially limit. The impairments include: deafness, blindness, intellectual disability (formerly known as mental retardation), partially or completely missing limbs, mobility impairments requiring use of a wheelchair, autism, cancer, cerebral palsy, diabetes, epilepsy, HIV infection, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder, and schizophrenia.

Pregnancy 妊娠

Pregnancy is not an impairment and therefore cannot be a disability. Certain impairments resulting from pregnancy (e.g., gestational diabetes), however, may be considered a disability if they substantially limit a major life activity or if they meet one of the other two definitions of disability.

PRONG 2: A RECORD OF A DISABILITY

障害の記録

An individual who does not currently have a substantially limiting impairment but who had one *in the past* meets this definition of “disability.” An individual also can meet the “record of” definition of disability if she was once misclassified as having a substantially limiting impairment (e.g., someone erroneously deemed to have had a learning disability but who did not).

PRONG 3: REGARDING AN INDIVIDUAL AS HAVING A DISABILITY

障害を持つ人への評価

Under the ADAAA, an employer “regards” an individual as having a disability if it takes an action prohibited by the ADA (e.g., failure to hire, termination, or demotion) based on an individual’s impairment or on an impairment the employer believes the individual has, unless the impairment is both transitory (lasting or expected to last for six months or less) and minor.

An employer may challenge a claim under the “regarded as” prong by showing that the impairment in question, whether actual or perceived, is both transitory and minor. In other words, whether the impairment in question is transitory and minor is a defense available to employers. However, an employer may not defeat a claim by asserting it believed an impairment was transitory and minor when objectively this is not the case. For example, an employer who fires an employee because he has bipolar disorder cannot assert that it believed the impairment was transitory and minor because bipolar disorder is not objectively transitory and minor.